

REMARKS

Claims 1-25 are pending. Claims 1, 5, 7, and 21 are amended for clarity. For at least the reasons set forth herein, Applicants submit all of claims 1-25 are in condition for allowance.

Claim 21 is objected to for an informality. Claim 21 has been amended to correct the typographical error.

Claims 1-25 are rejected under 35 USC 112, second paragraph. Claims 1, 5, 7, and 21 have been amended to correct typographical errors and provide proper antecedent basis for all elements. The amendments are supported by the claims as originally filed and the specification. In view of the amendments, the rejection is obviated, and reconsideration and withdrawal of the rejection are respectfully solicited.

Claims 1-4 and 8-20 are rejected under 35 USC 102(e) over Guire et al., U.S. Pat. Pub. 2003/0073086. Claims 5-7 and 21-25 are rejected under 35 USC 103(a) over Guire et al. in view of Porter et al., US 6,146,899. For at least the following reasons, Applicants traverse the rejections.

Applicants conceived of and reduced to practice the claimed method of identifying biological samples as set forth at least in independent claims 1 and 21 before filing of Guire et al. in the US Patent and Trademark Office on October 5, 2001. As shown in the accompanying Declaration under 37 CFR 1.131, Tieching Qiao, a co-inventor, recorded the idea of identifying biological samples by labeling a microarray with one or more optical barcode, contacting the microarray with a target biological sample, and detecting the labeled sample, as claimed in claims 1 and 21, in his notebook, Notebook BB7408, at pages 131 and 132, on August 16, 2000. Various embodiments of this idea are shown in the figure entitled "Alternative Binding Protein Arrays" dated October 10, 2000, and the figure entitled "Universal Application of Random Bead Array" dated December 21, 2000, both from the notes of co-inventor Douglas Vizard. The barcoded microspheres, labeled with a colorant, were made at least on February 13, 2001, as recorded on page 138 of Notebook BB7408 of Tieching Qiao. Preparation of a microarray using the microspheres, hybridization of the same to a DNA sample, and detection and identification of the

sample were done in an experiment on at least March 9, 2001, as recorded on pages 139-141 of Notebook BB7408. A further experiment on June 26, 2001, is recorded on pages 56-58 of Notebook BB9618, wherein an oligonucleotide strand was dissolved, hybridized to a colored bead-labeled strip, conjugated, and imaged according to one method of the invention. This work was performed by lab assistant Brian Kelley under the direction of Tiecheng Qiao. Further developmental work on at least the imaging aspects of the system was continued by Douglas Vizard, as shown in his October 24, 2001, notes regarding imaging of the microspheres, and his December 7, 2001, image entitled "Spot Size from Pointilliste 96-well Prints," showing spot size and resolution of the image dependent on the number of pixels used in the imaging system. It is noted that preparation of the pending application was started with the Eastman Kodak Company patent department on or about June 4, 2001.

As shown by the evidence provided with the Declaration, the inventors of the pending application conceived and reduced to practice the invention before the filing date of Guire et al., October 5, 2001. Thus, Guire et al. can not be cited as a reference. Applicants note the Declaration is unsigned. A signed copy will be filed shortly.

Porter et al. is cited for a teaching of bright field illumination. Porter et al. teaches a height referencing biochemical cassette. Porter et al. does not disclose or suggest all the features of the claimed invention, such as labeling a microarray with one or more optical barcode, contacting the microarray with a target biological sample, and detecting the labeled sample, as claimed in claims 1 and 21.

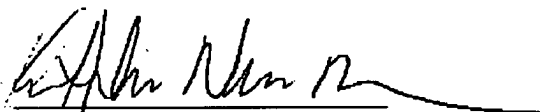
For at least the above reasons, Guire et al. is removed as a reference, and Porter et al. does not disclose or suggest each and every feature of the claimed invention. Reconsideration and withdrawal of the rejections under 35 USC 102(e) and 35 USC 103(a) are believed to be in order, and are respectfully solicited.

Claims 21-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly unpatentable over claims 21-25 of copending application 10/098,642. Applicants will take appropriate action if and when this rejection is no longer provisional.

For at least the reasons set forth above, Applicants submit all of Claims 1-25 are in condition for allowance. Prompt and favorable action is respectfully requested.

Should the Examiner require anything further, or have any questions, the Examiner is asked to contact Applicants' undersigned representative.

Respectfully submitted,



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